Internal Revenue Service

memorandum

date: August 12, 1991

to: District Counsel, Austin, TX

from: Assistant Chief Counsel (Income Tax and Accounting)

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subject: [redacted]

This memorandum reflects our tentative conclusions regarding the entitlement of [redacted] to interest on a refund claim filed under section 212 of the Tax Reform Act of 1986 (the "Act"). You have had several telephone conversations with members of my staff concerning this matter.

Issue Presented

Is [redacted] entitled to interest on its claim for refund of an amount that is treated as a payment of income taxes under section 212 of the Act?

Resolution

We believe that [redacted] is entitled to interest on its claim for refund under section 212 of the Act accruing from [redacted].

Background

Under section 212 of the Act, a qualified steel company may elect to treat the lesser of 50 percent of any portion of its investment tax credit carryforwards or the corporation's net tax liability for the 15-year carryback period as a payment against the tax imposed by chapter 1 of the Internal Revenue Code of 1986. Such payment is treated as a payment against tax for the corporation's first taxable year beginning after December 31, 1986, and is treated as made on the last day prescribed by law (without regard to extensions) for such corporation to file such tax return. Id. The purpose of section 212 was to provide financial assistance to seven distressed steel companies based on their investment tax credit carryforwards.

The Congressional Record contains a Senate floor colloquy between Senators Packwood and Heinz that indicates Congressional intent to provide a method of obtaining a refund without awaiting normal tax audit procedures. See 132 Cong. Rec. 15056, 15057 (1986) (remarks of Senators Packwood and Heinz). Because at that time no such procedure implementing a quick refund was incorporated into section 212, the steel companies suggested using section 6425 of the Internal Revenue Code. Section 6425 provides a procedure whereby a corporation can, after the close of its tax year but prior to filing a tax return for that year, receive a quick refund of overpaid estimated taxes. The Service rejected the use of section 6425 in this regard -- essentially because it did not regard the claim to be one for estimated taxes -- and instead permitted the affected steel companies (including [redacted], as discussed below) to enter into closing agreements. Ultimately, however, in the November 1988 tax act, section 212(h) was added to provide that rules similar to the rules of section 6425 of the Internal Revenue Code of 1986 shall apply to any overpayment resulting from the application of section 212. This provision first appeared in a June 1987 House Bill, but was not made part of the 1987 act.

Facts

[redacted] entered into a closing agreement with the Service on [redacted], with regard to its anticipated claim under section 212 of the Act. Under paragraph [redacted] of the closing agreement, the Service agreed that [redacted] "may make an election under section 212 of the Act any time during the limitation period under section 6511 of the Internal Revenue Code for filing a claim for credit or refund of overpayment of taxes for taxpayer's [redacted] consolidated return tax year." Under paragraph [redacted] of [redacted]'s closing agreement, the Service agreed that:

> " . . . any refund to the taxpayer on account of a timely election by the taxpayer under section 212 of the Act will accrue interest from [redacted], unless ... otherwise provided for by any change in any law subsequent to the date of this agreement." (Emphasis added.)

On [redacted], [redacted] filed an election and claim for refund of overpayment of tax in the amount of $[redacted], plus accrued interest of approximately $[redacted], pursuant to section 212 and [redacted]'s closing agreement. The overpayment was for [redacted]'s taxable year ended [redacted]. We assume that the entire claim is for refund of the amount that was treated as a payment of taxes under section 212. We further assume that the claim for accrued interest is for interest accrued from [redacted], which is the starting date for interest accrual under [redacted]'s closing agreement.

Analysis

Your office maintains that subsection (h) of section 212, added by the 1988 tax act, is a subsequent change in the law that operates to override the closing agreement and deny [redacted] interest on its section 212 claim. The analysis is as follows. All overpayments under section 212 are governed by rules under section 6425 of the Code. An application for adjustment of an overpayment of estimated taxes under section 6425 is not a claim for refund; rather, it is a claim for reduction of previously paid estimated taxes. Section 6425(a). Section 6611(a) provides that interest shall be allowed and paid on any overpayment of tax. Because [redacted]'s claim is for a reduction of estimated taxes and not an overpayment of taxes, payment of interest is not allowed.

Notwithstanding the above analysis, we believe that the better view is that [redacted] is entitled to interest on its section 212 claim for three reasons. First, we view section 212(h) as a procedural provision rather than a substantive one; therefore, it should not affect the closing agreement. Section 212(a) clearly designates the amount referred to therein as a payment against tax, not a payment against estimated tax. While section 212(h) was enacted subsequently to section 212(a), the facts suggest that it was intended only as a mechanism for taxpayers to obtain a quick refund and was not intended to change the substantive law. Indeed, the legislative history to the 1986 act indicates that Congress at least broached the topic of a quick refund procedure. Moreover, the procedure adopted -- rules similar to section 6425 -- was actually the one suggested by the steel industry itself and in fact does provide for a quick refund. Because section 212(h) appears to be a mere procedural provision, it should not be interpreted to convert the payment of tax described in section 212(a) into a payment of estimated tax. Thus, the closing agreement should not be affected.

Second, assuming arguendo that section 212(h) does convert the tax into an estimated tax, as a matter of statutory construction it still seems doubtful that section 212(h) would override section 212(a). While section 212(a) is specific -- it clearly provides that the taxpayer will be deemed to make a payment against tax -- section 212(h) is somewhat vague. It provides only that rules "similar" to section 6425 shall apply. In this regard, we note that the Service in effect had already applied rules similar to section 6425 -- by entering into the closing agreements -- without changing the substantive law of section 212. Because section 212(a) is more specific than section 212(h) regarding the type of tax that is deemed paid, section 212(a) should control.

Third, section 212(h) could be interpreted as endorsing the Service's procedure for handling refunds filed under section 212(a) -- i.e., endorsing the Service's entering into closing agreements that permitted affected taxpayers to receive refunds before filing their 1987 tax returns. As noted above, the House had considered adopting a rule that mirrored section 212(h) as early as June 1987. Although the rule was not included in the 1987 act, the Service essentially provided the taxpayers with the same relief they would have obtained had the rule become law at that time. Thus, the later enactment of section 212(h), which was finally added in November 1988, may be viewed as an endorsement of the relief provided in the closing agreements.

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